

Civil No. 05-1596(HL)
re: Cr. 02-042-3(HL)

Page -3-

Petitioner has moved for Section 2255 relief alleging counsel Ignacio Rivera was ineffective by: (1) agreeing to a 2-level increase for obstruction of justice and waiving a hearing; (2) failing to “protect his interests” before the district court proceedings as to the total loss calculation by agreeing to a stipulation that petitioner was responsible for losses between \$350,000 and \$600,000; (3) failing to argue, both at the trial and appellate levels, that petitioner was not responsible for the total loss of \$4.3 million alleged in the indictment but for the amount stipulated in the Plea and Cooperation Agreement. Petitioner further argues that his sentence is excessive.

The Law of the Case

The Court notes, at the outset, that “[w]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”

Morris v. American Nat'l Can Corp., 988 F.2d 50, 52 (8th Cir. 1993), cited in *First Union Nat. Bank v. Pictet Overseas Trust Corp., Ltd.*, ___ F.3d ___, 2007 WL 136043, *2 (8th Cir. Jan. 22, 2007). This is meant to “prevent [] relitigation of settled issues in a case, thus protecting the settled expectations of parties, ensuring uniformity of decisions, and promoting judicial efficiency.” *Little Earth of the United States Tribes, Inc. v. United States Dept. of Hous. & Urban Dev.*, 807 F.2d 1433, 1441 (8th Cir. 1986).

Petitioner has raised issues squarely decided on appeal. Petitioner argues that he was improperly denied a downward departure for substantial assistance and that his sentence should